

ENCODING RULES

**As proposed to the FCC
(not effective until adopted by the FCC)**

Cross Reference

§76.1211

Each multi-channel video programming distributor shall comply with the requirements of subpart W with respect to the services covered by that subpart.

Part 76, Subpart W

§76.1901 Applicability

- (a) Each multi-channel video programming distributor shall comply with the requirements of subpart W.
- (b) These rules shall not apply to distribution of any content over the Internet, nor to a multi-channel video programming distributor's operations via cable modem or DSL.
- (c) With respect to cable system operators, this subpart shall apply only to Cable Services. This subpart shall not apply to cable modem services, whether or not provided by a cable system operator or affiliate.

§76.1902 Definitions

"Commercial Advertising Messages" shall mean, with respect to any service, Program, or schedule or group of Programs, commercial advertising messages other than (a) advertising relating to such service itself or the programming contained therein, (b) interstitial programming relating to such service itself or the programming contained therein, or (c) any advertising which is displayed concurrently with the display of any part of such Program(s), including but not limited to "bugs," "frames" and "banners."

"Commercial Audiovisual Content" shall mean works that consist of a series of related images which are intrinsically intended to be shown by the use of machines, or devices such as projectors, viewers, or electronic equipment, together with accompanying sounds, if any, regardless of the nature of the material objects, such as films or tapes, in which the works are embodied, transmitted by a Covered Entity and that are (a) not created by the user of a Covered Product and (b) offered for transmission, either generally or on demand, to subscribers or purchasers or the public at large or otherwise for commercial purposes, not uniquely to an individual or a small, private group.

"Commercially-Adopted Access Control Method" shall mean any commercially-adopted access control method, such as CSS, Digicypher, Harmony, DBS and any other

commercially-adopted access control technology, including digitally controlled analog scrambling systems, whether now or hereafter in commercial use.

“Copy Never” shall mean, with respect to Commercial Audiovisual Content, the Encoding of such content so as to signal that such content may not to be copied by a Covered Product.

“Copy One Generation” shall mean, with respect to Commercial Audiovisual Content, the Encoding of such content so as to permit a first generation of copies to be made by a Covered Product but not copies of such first generation of copies.

“Copy No More” shall mean, with respect to Commercial Audiovisual Content, the Encoding of such content so as to reflect that such content is a first generation copy of content Encoded as Copy One Generation and no further copies are permitted.

“Covered Product” shall mean a device used by consumers to access Commercial Audiovisual Content offered by a Covered Entity (excluding delivery via cable modem or the Internet); and any device to which Commercial Audiovisual Content so delivered from such Covered Product may be passed, directly or indirectly.

“Covered Entity” shall mean an entity that is subject to this subpart W

“Defined Business Model” shall mean Video-on-Demand, Pay-Per View, Pay Television Transmission, Subscription-on-Demand, Non-Premium Subscription Television, Free Conditional Access Delivery and Unencrypted Broadcast Television.

“Encode” shall mean, in the transmission of Commercial Audiovisual Content, to pass, attach, embed, or otherwise apply to, associate with, or allow to persist in or remain associated with such content, data or information which when read or responded to in a Covered Device has the effect of preventing, pausing, or limiting copying, or constraining the resolution of a Program when output from the Covered Device

“Encoding Rules” shall mean the requirements or prohibitions describing or limiting Encoding of audiovisual content as set forth in this Rule

“Free Conditional Access Delivery” shall mean a delivery of a service, Program, or schedule or group of Programs via a Commercially-Adopted Access Control Method, where viewers are not charged any fee (other than government-mandated fees) for the reception or viewing of the programming contained therein, other than Unencrypted Broadcast Television

“Non-Premium Subscription Television” shall mean a service, or schedule or group of Programs (which may be offered for sale together with other services, or schedule or group of Programs), for which subscribers are charged a subscription fee for the reception or viewing of the programming contained therein, other than Pay Television, Subscription-on-Demand and Unencrypted Broadcast Television. By way of example, “basic cable service” and “extended

basic cable service” (other than Unencrypted Broadcast Television) are “Non-Premium Subscription Television.”

“Pay-Per-View” shall mean a delivery of a single Program or a specified group of Programs, as to which each such single Program is generally uninterrupted by Commercial Advertising Messages and for which recipients are charged a separate fee for each Program or specified group of Programs. The term “Pay-Per-View” shall also include delivery of a single Program as described above for which multiple start times are made available at time intervals which are less than the running time of such Program as a whole. If a given delivery qualifies both as Pay-Per-View and a Pay Television Transmission, then, for purposes of this Rule, such delivery shall be deemed Pay-Per-View rather than a Pay Television Transmission

“Pay Television Transmission” shall mean a transmission of a service or schedule of Programs, as to which each individual Program is generally uninterrupted by Commercial Advertising Messages and for which service or schedule of Programs subscribing viewers are charged a periodic subscription fee, such as on a monthly basis, for the reception of such programming delivered by such service whether separately or together with other services or programming, during the specified viewing period covered by such fee. If a given delivery qualifies both as a Pay Television Transmission and Pay-Per-View, Video-on-Demand, or Subscription-on-Demand then, for purposes of this Rule, such delivery shall be deemed Pay-Per-View, Video-on-Demand or Subscription-on-Demand rather than a Pay Television Transmission

“Program” shall mean any work of Commercial Audiovisual Content.

“Subscription-on-Demand” shall mean the delivery of a single Program or a specified group of Programs for which (i) a subscriber is able, at his or her discretion, to select the time for commencement of exhibition thereof; (ii) where each such single Program is generally uninterrupted by Commercial Advertising Messages; and (iii) for which Program or specified group of Programs subscribing viewers are charged a periodic subscription fee for the reception of programming delivered by such service during the specified viewing period covered by the fee. In the event a given delivery of a Program qualifies both as a Pay Television Transmission and Subscription-on-Demand, then for purposes of this Rule, such delivery shall be deemed Subscription-on-Demand rather than a Pay Television Transmission.

“Undefined Business Model” shall mean a business model that does not fall within the definition of a Defined Business Model.

“Unencrypted Broadcast Television” means any service, Program, or schedule or group of Programs, that is a further transmission of a broadcast transmission (i.e., an over-the-air transmission for reception by the general public using radio frequencies allocated for that purpose) that substantially simultaneously is made by a terrestrial television broadcast station located within the country or territory in which the entity further transmitting such broadcast transmission also is located, where such broadcast transmission is not subject to a Commercially-Adopted Access Control Method (e.g., is broadcast in the clear to members of the public

receiving such broadcasts), regardless of whether such entity subjects such further transmission to an access control method.

"Video-on-Demand" shall mean a delivery of a single Program or a specified group of Programs for which (i) each such individual Program is generally uninterrupted by Commercial Advertising Messages; (ii) recipients are charged a separate fee for each such single Program or specified group of Programs; and (iii) a recipient is able, at his or her discretion, to select the time for commencement of exhibition of such individual Program or specified group of Programs. In the event a delivery qualifies as both Video-on-Demand and a Pay Television Transmission, then for purposes of this Rule, such delivery shall be deemed Video-on-Demand.

§ 76.1903 Interface and Encoding Rules

1. Rules As to Interfaces

A Covered Entity shall not attach or embed data or information with Commercial Audiovisual Content, or otherwise apply to, associate with, or allow such data to persist in or remain associated with such content, so as to prevent its output through any analog or digital output authorized or permitted under license, law or regulation governing such Covered Product.

2. Encoding Rules for Defined Business Models

(a) Commercial Audiovisual Content delivered as Unencrypted Broadcast Television shall not be Encoded so as to prevent or limit copying thereof by Covered Products or to constrain the resolution of the image when output from a Covered Product.

(b) Except for (i) a specific determination made by the Commission pursuant to a petition with respect to a Defined Business Model other than Unencrypted Broadcast Television; or (ii) an Undefined Business Model subject to the procedures set forth in this Section:

(A) Commercial Audiovisual Content shall not be Encoded so as to prevent or limit copying thereof except as follows:

(i) to prevent or limit copying of Video-on-Demand, Pay-Per-View, or Subscription-on-Demand transmissions, subject to the requirements of subsection 2(B); and

(ii) to prevent or limit copying, other than first generation of copies, of Pay Television Transmissions, Non-Premium Subscription Television, and Free Conditional Access Delivery transmissions; and

(B) With respect to any Commercial Audiovisual Content delivered or transmitted in the form of a Video-on-Demand, Pay-Per-View or Subscription-on-Demand transmission, a Covered Entity shall not Encode such content so as to prevent a Covered Product, without further authorization, from pausing such content up to 90 minutes from initial transmission by the Covered Entity (e.g., frame-by-frame, minute-by-minute, megabyte by megabyte, etc.).

(c) The Commission may by petition determine whether it would be in the public interest to allow within a Defined Business Model the Encoding of a service other than in accordance with the Encoding Rule set forth in subsections 2(b)(A) and 2(b)(B) applicable to such Defined Business Model.

(1) Petition

The Encoding Rules for Defined Business Models reflect the conventional methods for packaging programs in the MVPD market as of December 31, 2002, and are presumed to be the appropriate rules for Defined Business Models. A Covered Entity may by petition request approval from the Commission for delivering Commercial Audiovisual Content, other than Unencrypted Broadcast Television, pursuant to a Defined Business Model other than as permitted by the Encoding Rules set forth in subsections 2(b)(A) and 2(b)(B). No such petition will be approved under the public interest test set forth below unless the service differs from services provided by any Covered Entity under the applicable Defined Business Model prior to December 31, 2002.

A petition to Encode a service within a Defined Business Model other than as permitted by the Encoding Rules set forth in subsections 2(b)(A) and 2(b)(B) shall describe.

- (1) The Defined Business Model, the service, and the proposed Encoding terms, including the use of Copy Never and Copy One Generation Encoding, and the Encoding of content with respect to "pause" (subsection 2(b)(B))
- (2) The claimed benefit to consumers of the service, including, but not limited to, the availability of content in earlier release windows, more favorable terms, innovation or original programming;
- (3) The ways in which the service differs from services offered by any Covered Entity within the applicable Defined Business Model prior to December 31, 2002;
- (4) The effect on reasonable and customary expectations of consumers with respect to home recording;
- (5) All other pertinent facts and considerations relied on to support a determination that grant of the Petition would serve the public interest.

Factual allegations shall be supported by affidavit or declaration of a person or persons with actual knowledge of the facts, and exhibits shall be verified by the person who prepares them.

(ii) Comment

The Commission shall give public notice of any such Petition

Interested persons may submit comments or oppositions to the petition within thirty (30) days after the date of public notice of the filing of such petition. Comments or oppositions shall be served on the petitioner and on all persons listed in petitioner's certificate of service, and shall contain a detailed full statement of any facts or considerations relied on. Factual allegations shall be supported by affidavit or declaration of a person or persons with actual knowledge of the facts, and exhibits shall be verified by the person who prepares them.

The petitioner may file a reply to the comments or oppositions within ten (10) days after their submission, which shall be served on all persons who have filed pleadings and shall also contain a detailed full showing, supported by affidavit or declaration, of any additional facts or considerations relied on. There shall be no further pleadings filed after petitioner's reply, unless authorized by the Commission.

(iii) Commission determination as to Encoding Rule for a new service within a Defined Business Model

(a) In an unrestricted proceeding, unless otherwise specified by the Commission, to determine whether Encoding other than in accordance with the Encoding Rule set forth in subsections 2(b)(A) and 2(b)(B) for the applicable Defined Business Model may be applied to a service within such Defined Business Model, the Covered Entity shall have the burden of proof to establish that the proposed change in Encoding is in the public interest. Within ninety (90) days after the Commission gives public notice of the filing of the original petition, the Commission shall determine whether a grant of the petition is in the public interest. In making such determination, the Commission shall take into account the following factors:

- (1) The benefit to consumers of the new service, including but not limited to earlier release windows, more favorable terms, innovation or original programming;
- (2) Ways in which the new service differs from services offered by any Covered Entity within the applicable Defined Business Model prior to December 31, 2002;
- (3) Reasonable and customary expectations of consumers with respect to home recording

(b) The Commission may specify other procedures, such as oral argument, evidentiary hearing, or further written submissions directed to particular aspects, as it deems appropriate, but in no event shall such other procedures delay the process beyond the timeframe for Commission decision set forth in subsection 2(c)(iii).

(c) A petition may, upon request of the petitioner, be dismissed without prejudice as a matter of right prior to the adoption date of any final action taken by the Commission with respect to the petition. A petitioner's request for the return of a petition will be regarded as a request for dismissal.

(d) Complaint regarding a service not subject to petition

In an instance in which a party entitled to be a Complainant has a substantial basis to believe and does believe in good faith that a service within a Defined Business Model has been launched without a petition as required by this Rule, such party may file a complaint pursuant to section 76.7 of the Commission's rules, and in appropriate circumstances the Commission shall rule upon the complaint within 90 days.

3. Encoding Rules **for** Undefined Business Models

(a) Upon public notice and subject to requirements as set forth herein a Covered Entity may launch a program service pursuant to an Undefined Business Model. Subject to Commission review upon Complaint, the Covered Entity may initially Encode programs pursuant to such Undefined Business Model without regard to limitations set forth in subpart 76.1903(2).

(1) Notice

Concurrent with the launch of an Undefined Business Model by a Covered Entity, the Covered Entity shall issue a press release to the PR Newswire so as to provide public notice of the Undefined Business Model, and the proposed Encoding terms. The notice shall provide a concise summary of the Commercial Audiovisual Content to be provided pursuant to the Undefined Business Model, and of the terms on which such content is to be available to consumers. Immediately upon request from a party entitled to be a Complainant, the Covered Entity shall make available information that indicates the proposed Encoding terms, including the use of Copy Never or Copy One Generation Encoding, and the Encoding of content with respect to "pause" (subsection 2(b)(B)).

(2) Complaint Process

A manufacturer of a Covered Product, a manufacturer for whom the product was manufactured, or a Covered Entity ("Coinplainant") may file a complaint with the Commission *objecting to application of Encoding as set forth in the notice.*

(a) Pre-complaint resolution

Prior to initiating a complaint with the Commission under this section 3, the Complainant shall notify the Covered Entity that it may file a complaint under this section. The notice must be sufficiently detailed so that the Covered Entity can determine the specific nature of the potential complaint. The potential Coinplainant must allow a minimum of thirty (30) days from such notice before filing such complaint with the Commission. During this period the parties shall endeavor in good faith to resolve the issue(s) in dispute. If the parties fail to reach agreement within this 30 day period, Complainant may initiate a *complaint in accordance with the procedures set forth herein.*

(b) Complaint

Within two years of publication of a notice under 3(a)(1), a Complainant may file a complaint with the Commission *objecting to application of the Encoding terms to the service at issue. Such complaint shall state with particularity the basis for objection to the Encoding terms.*

- (i) The complaint shall contain the name and address of the complainant and the name and address of the Covered Entity

- (ii) The complaint shall be accompanied by a certification of service on the named Covered Entity
- (iii) The complaint shall set forth with specificity all information and argument relied upon. Specific factual allegations shall be supported by a declaration of a person or persons with actual knowledge of the facts, and exhibits shall be verified by the person who prepares them.
- (iv) The complaint shall set forth attempts made by the Complainant to resolve its complaint pursuant to subsection (a).

The Commission shall give public notice of the filing of the complaint. Once the Commission has issued such public notice, any person otherwise entitled to be a Complainant shall instead have the status of a person submitting comments under subsection (c) rather than a Complainant.

(c) Comments and Reply

Any person may submit comments regarding the complaint within thirty (30) days after the date of public notice by the Commission. Comments shall be served on the Complainant and the Covered Entity and on any persons listed in relevant certificates of service, and shall contain a detailed full statement of any facts or considerations relied on. Specific factual allegations shall be supported by a declaration of a person or persons with actual knowledge of the facts, and exhibits shall be verified by the person who prepares them.

The Covered Entity may file a Response to the Complaint and comments within twenty (20) days after the date that comments are due. Such Response shall be served on all persons who have filed complaints or comments and shall also contain a detailed full showing, supported by affidavit or declaration, of any additional facts or considerations relied on. Replies shall be due ten (10) days from the date for filing a Response.

There shall be no further pleadings filed, unless authorized by the Commission

(3) Commission determination as to encoding terms for an Undefined Business Model

In an unrestricted proceeding, unless otherwise specified by the Commission, to determine whether Encoding terms as noticed may be applied to an Undefined Business Model, the Covered Entity shall have the burden of proof to establish that application of the Encoding terms in the Undefined Business Model is in the public interest. In making any such determination, the Commission shall take into account the following factors:

- (i) The benefit to consumers of the new service, including but not limited to earlier release windows, more favorable terms, innovation or original programming;

(ii) **Ways** in which the new service differs from services offered by any Covered Entity prior to December 31, 2002;

(iii) Reasonable and customary expectations of consumers with respect to home recording.

(4) Determination

(A) Within ninety (90) days of the Commission's public notice of the complaint, the Commission shall determine whether to approve the Encoding terms as noticed

(B) The Commission may specify other procedures, such as oral argument, evidentiary hearing, or further written submissions directed to particular aspects, as it deems appropriate, but in no event shall such other procedures delay the process beyond the timeframe for Commission decision set forth herein

(b) Complaint re a service not subject to notice

In an instance in which a party entitled to be a Complainant has a substantial basis to believe and believes in good faith that a service pursuant to an Undefined Business Model has been launched without requisite notice, such party may file a coinplaint pursuant to section 76.7 of the Commission's rules, and in appropriate circumstances the Commission shall rule upon the coinplaint within 90 days.

4. Temporary Bona Fide Trials. The obligations and procedures as to Encoding Rules set forth in 2(b) and (c) and 3(a) and (b) do not apply in the case of a temporary bona fide trial of a service.

5. Certain Practices **Not Prohibited**. Nothing in this Rule shall be construed as prohibiting a Covered Entity from:

(a) encoding, storing or managing Commercial Audiovisual Content within its distribution system or within a Covered Product under the control of a Covered Entity's Commercially-Adopted Access Control Method, provided that the outcome for the consumer from the application of the Encoding Rules set out in sections 2(a) and (b) is unchanged thereby when such Commercial Audiovisual Content is released to consumer control, or

(b) causing, with respect to a specific Covered Product, the output of content from such product in a format as necessary to match the display format of another device connected to such product, including but not limited to providing for content conversion between widely-used formats for the transport, processing and display of audiovisual signals or data, such as between analog and digital formats and between PAL and NTSC or RGB and Y,Pb,Pr.

**DFAST TECHNOLOGY LICENSE AGREEMENT
FOR UNIDIRECTIONAL DIGITAL CABLE PRODUCTS**

THIS LICENSE AGREEMENT (the “**Agreement**”) is made as of _____
(the “Effective Date”), by and between _____, having a
place of business at _____ (“**Licensee**”), and CABLE
TELEVISION LABORATORIES, INC., having a place of business at 400 Centennial
Parkway, Louisville, Colorado, USA 80027-1266 (“**CableLabs**”).

WHEREAS, CableLabs is a research and development company funded by the cable
television industry;

WHEREAS, CableLabs has acquired the rights to the DFAST scrambling technology,
portions of which are embodied in a U.S. patent;

WHEREAS, Licensee is in the business of, among other things, designing, developing,
manufacturing and distributing products related to digital television; and

WHEREAS, this Agreement provides a right to use the DFAST scrambling technology;

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants
and agreements set forth herein, the parties hereby agree as follows:

I. **DEFINITIONS.** In addition to terms defined elsewhere in this Agreement, the following
terms shall have the following meanings. All definitions herein shall apply equally to their
singular and plural forms, all pronouns shall apply without regard to gender, and all references to
Sections and Exhibits shall be deemed to be references to Sections of, and Exhibit to, this
Agreement unless the context shall otherwise require.

1.1 “Cable Operator” means any cable operator that CableLabs identifies on its
<www.cablelabs.com> website as a member and any other cable operator that provides POD
Modules to customers in connection with the provision of cable services in North America.

1.2 “Compliance Rules” mean the rules described in Exhibit B hereto, as such rules
may be amended from time to time pursuant to Section 6.2.

1.3 “Compliant” refers to a product that is in compliance with all applicable
Compliance Rules and Robustness Rules.

1.4 “Controlled Content” means content that has been transmitted from the POD
Module with the encryption mode indicator (“EMI”) bits set to a value other than zero, zero
(0,0).

1.5 “Derivative Work” means any work that is based upon DFAST Technology, other than the Referenced Technology, such as a revision, improvement, enhancement, modification, translation, abridgment, condensation, expansion, collection, compilation or other form in which such DFAST Technology may be recast, transformed, ported or adapted and that, if prepared without authorization of CableLabs, would constitute infringement of the DFAST Technology

1.6 “DFAST Technology” means the Licensed Patents collectively with the Licensed Know-How

1.7 “Documentation” means user manuals and other written materials (whether in print or electronic form) that relate to the DFAST Technology that have been provided by CableLabs hereunder, including materials for design (for example, flow charts and principles of installation, configuration, administration, and operation) and machine readable text or graphic files subject to display or print-out.

1.8 “Encoding Rules” means the rules of the United States Federal Communications Commission applicable to use of the Compliance Rules

1.9 “Essential Patent Claim(s)” means claims of a patent or patent application pending on the effective date of this Agreement, issued now or in the future, that are necessarily infringed by those portions of Unidirectional Digital Cable Products that implement inventions claimed in US Patent 4,860,353. Without limiting the foregoing, Essential Patent Claims shall not include (a) any claims relating to semiconductor manufacturing technology, (b) claims relating to aspects of any technology or standard that is not itself part of the Referenced Technology (including by way of example, CSS, MPEG, IEEE 1394, DES, NRSS and smart card technology) even if such standard may otherwise be mentioned or required by the Referenced Technology; (c) claims which, if licensed, would require a payment of royalties by the licensor to unaffiliated third parties; (d) claims relating to any technology introduced into the Referenced Technology, the Compliance Rules or the Robustness Rules pursuant to changes made in accordance with Section 6; or (e) any claims other than those that are necessarily infringed by those portions of Unidirectional Digital Cable Products that implement the inventions claimed in US Patent 4,860,353, even if contained in the same patent as such claim(s).

1.10 “Intellectual Property Rights” means all intellectual property rights arising under statutory law, common law or by contract, and whether or not perfected, including, without limitation, all (a) patents, patent applications and patent rights, (b) rights associated with works of authorship including copyrights, copyright applications, copyright registrations, mask work rights, mask work applications, mask work registrations, and derivative works of the foregoing, (c) rights relating to the protection of trade secrets and confidential information, (d) trademarks, trade dress, trade name, design patent and service mark rights, whether or not registered and (e) divisions, continuations, continuations in part, renewals, reissues and extensions of the foregoing (a) and to the extent applicable) now existing, hereafter filed, issued or acquired.

1.11 “Licensed Components” means component products which utilize the DFAST Technology and are designed for incorporation into Unidirectional Digital Cable Products.

1.12 “Licensed **Know-How**” means all know-how, associated technology, trade secrets, copyrighted works, reference source code implementations, shared secret keys, Diffie-Hellman system parameters, encryption and decryption keys, software development tools, methodologies, processes, technologies or algorithms, test data sets and test cases and other implementations of technology that CableLabs shall deliver to Licensee to assist in incorporating the **DFAST** Technology into Licensed Components, Prototypes, or Unidirectional Digital Cable Products.

1.13 “Licensed Patents” means U.S. Patent 4,860,353, any application, division, continuation or continuation in part of the foregoing patent, any patent reissuing on or reissuing pursuant to a reexamination of the foregoing patent and all foreign equivalents that CableLabs owns or has the rights to license.

1.14 “Prototype” means a pre-production model of a Unidirectional Digital Cable Product that is not sold commercially.

1.15 “**POD** Module” means an individual addressable device *for* authorizing and de-authorizing the decryption or descrambling of services and individual programs and events delivered through the Unidirectional Digital Cable Product on a service by service or individual program or event basis.

1.16 “Referenced Technology” means those standards set forth on Exhibit A hereto; provided however, Referenced Technology does not include any third party proprietary technology referenced in or required by such standards, such as DES, DTCP, or MPEG-2

1.17 “Robustness Rules” mean the rules described in Exhibit C hereto, as such rules may be amended from time to time in accordance with Section 6.2.

1.18 “Test Tools” means devices that (a) utilize the DFAST Technology and have as their purpose the testing or verification of the performance of, or (b) are specifically designed for the purpose of testing or verification of the performance of, Unidirectional Digital Cable Products and Prototypes.

1.19 “Unidirectional Digital Cable Products” means unidirectional (“one-way”) digital television products (including without limitation, televisions, set-top-boxes and recording devices) that use the DFAST Technology. Unidirectional Digital Cable Products shall not include interactive (“two-way”) digital television products, including, without limitation, products that are capable of obtaining access to video-on-demand or **impulse pay-per-view** services, of using the return path of the cable system, or of using electronic program guide services provisioned by the Cable Operator.

2. SCOPE

2.1 License for Unidirectional Digital Cable Products. A license is granted herein only for Compliant Unidirectional Digital Cable Products, Licensed Components and Prototypes and Test Tools. No license is granted hereunder for manufacture, sale or distribution of advanced interactive (two-way) digital cable products

2.2 Unidirectional Digital Cable Products. Unidirectional Digital Cable Products at the time of manufacture shall be Compliant and shall conform to the Referenced Technology as required by this Agreement. No feature or functionality of a Unidirectional Digital Cable Product, as manufactured and distributed, shall (a) technically disrupt, impede or impair the delivery of services to a cable customer; (b) cause physical harm to the network or the POD; (c) facilitate theft of service or otherwise interfere with reasonable actions taken by Cable Operators to prevent theft of service; (d) jeopardize the security of any services offered over the cable system; or (e) interfere with or disable the ability of a Cable Operator to communicate with or disable a POD Module or to disable services being transmitted through a POD Module.

3. LICENSE GRANTS AND RESTRICTIONS.

3.1 License for DFAST Technology. Subject to the terms and conditions set forth herein, CableLabs hereby grants to Licensee, and Licensee hereby accepts from CableLabs, a non-exclusive, non-transferable (except as set forth in Sections 3.2, 3.3 and 12.6 hereof) worldwide license under Intellectual Property Rights owned or licensable by CableLabs in the DFAST Technology to:

(a) possess and use the DFAST Technology to develop and test Prototypes, Test Tools, and Licensed Components;

(b) distribute the Test Tools and Licensed Components only to entities who have obtained a license from CableLabs for the use of the DFAST Technology (including, without limitation, entities that have obtained such license under PHILA or otherwise) (collectively, "**CableLabs Licensees**") and have made panics;

(c) distribute Prototypes to Cable Operators and other entities for the purpose of field trials and technology evaluation and not for retail;

(d) make, have made, use, sell, offer to sell, import and otherwise distribute in North America Unidirectional Digital Cable Products;

(e) practice any method or process under the DFAST Technology solely as necessary for the manufacture or use of products using the DFAST Technology in accordance with the terms and conditions of this Agreement;

(f) Any right granted hereunder to the DFAST Technology is also granted with respect to the DFAST Technology as implemented in a Derivative Work, provided that the

rights granted under this section 3.1(f) shall be subject to all of the limitations set forth in this Agreement with respect to the DFAST Technology;

(g) use and reproduce the Documentation in order to modify the Documentation as reasonably required in connection with Licensee's creation of Derivative Works in accordance with this Agreement; and

(h) distribute the modified Documentation to customers in connection with the distribution of Unidirectional Digital Cable Products in accordance with this Agreement, provided that such modified Documentation shall not reveal any confidential information contained in the DFAST Technology.

3.2 Limited Right for Test Tools. In addition to the rights granted under Section 3.1(a) and 3.1(b), Licensee shall have the limited right to make, have made, use, sell, offer to sell and otherwise distribute Test Tools, subject to the following limitations:

(a) Licensee shall distribute the Test Tools containing the DFAST Technology only to other CableLabs Licensees or have made parties. Licensee must separately maintain records of sales of Test Tools, and Licensee shall provide the names and contact information of each purchaser to CableLabs.

(b) Licensee shall limit the use of Test Tools for the purposes of ensuring proper operation, testing, debugging, integration and tuning. For the purposes of this Section 3.2(b): (i) "testing" shall mean a process of evaluating a Prototype or Unidirectional Digital Cable Product to ensure proper operation; (ii) "debugging" shall mean a process of finding the cause of an error in a Prototype or Unidirectional Digital Cable Product, including analysis for the purpose of exposing possible design flaws; (iii) "integration" shall mean a process of evaluating the performance of a Prototype or a Unidirectional Digital Cable Product with a POD Module to ensure that they properly operate together; and (iv) "tuning" shall mean a process of evaluating and improving a Prototype or Unidirectional Digital Cable Product to work more efficiently with a POD Module.

3.3 Limited Right for Licensed Components. Licensee shall have the limited right to make, have made, use, sell, offer to sell, import and otherwise distribute Licensed Components provided, however, that Licensee shall distribute the Licensed Components only to other CableLabs Licensees or have made parties; and provided further that Licensee must separately maintain records of sales of Licensed Components, and Licensee shall certify, upon request of CableLabs, that Licensed Components have been distributed only to other CableLabs Licensees that are listed on the CableLabs website (www.opencable.com) or to have made parties

3.4 No Other Licenses Granted. Except as provided herein, no license is granted by CableLabs, either directly or by implication, estoppel, or otherwise, and any rights not expressly granted to Licensee hereunder are reserved by CableLabs. No license is granted for any products (other than Licensed Components, Test Tools and Prototypes) that are not Compliant. All Intellectual Property Rights (except for Derivative Works made by Licensee which shall be

owned by Licensee) in the DFAST Technology shall be and remain the sole property of CableLabs or such companies that have licensed the DFAST Technology to CableLabs, and Licensee shall have no rights or interest in such DFAST Technology other than the rights granted to Licensee under this Agreement. CableLabs retains all right, title and interest in and to the Licensed Know-How used in connection with the DFAST Technology that are trade secrets or proprietary information of CableLabs or its licensors, members or affiliates or are otherwise owned or licensed by CableLabs.

3.5 Availability of Essential Patent Claims on Fair, Reasonable, and Non-Discriminatory Terms. With respect to all Essential Patent Claims owned or controlled by Licensee, Licensee agrees to make licenses, or cause licenses to be made, available for such Essential Patent Claims on terms that are fair, reasonable, and non-discriminatory to any third party that desires to implement or has Implemented the DFAST Technology in Unidirectional Digital Cable Products or Licensed Components. Such license may be limited to products or services that are made, sold, or offered for sale in accordance with the terms of such third party's DFAST Technology License Agreement for Unidirectional Digital Cable Products. In addition, Licensee shall only be bound by this Section 3.5 to the extent such third parties submit to an equivalent undertaking with respect to any Essential Patent Claims owned or controlled by such third party

3.6 Joint Defense of Intellectual Property Claims. If CableLabs on the one hand and/or Licensee on the other hand (each, a "Defendant"), should be sued on a single claim or related claims that the DFAST Technology necessarily infringes the patent or other rights of another party (a "Suit"), then the Defendants shall, subject to reasonable non-disclosure conditions, provide to each other reasonable non-privileged information and cooperation relating to their Suits, and CableLabs shall (subject to advice of litigation counsel) permit participation in the Suit by a Licensee that is not a Defendant at its own expense. Further, unless Licensee elects to independently defend the Suit, CableLabs and Licensee shall endeavor to negotiate in good faith a joint defense agreement whereby common claims against all Defendants may be defended in a coordinated and efficient manner. Provided that Licensee is a Defendant and is not exercising its right to pursue an independent defense of a Suit, CableLabs and Licensee shall establish a joint steering committee to negotiate in good faith allocations of joint defense costs where possible. Licensee shall have the right, in its sole discretion and at its sole expense, to pursue an independent defense of any Suit.

3.7 Technology Substitution in the Event of a Claim of Infringement. If CableLabs on the one hand or Licensee on the other hand receives notice that the DFAST Technology allegedly infringes a patent of a third party, then CableLabs may, at its sole option and expense, obtain for Licensee the right to use technology that is substantially equivalent to the DFAST Technology and does not infringe such patent.

4. ACTIVATION; DELIVERY OF LICENSED KNOW HOW; PRODUCTION FORECASTS.

4.1 Activation. At any time after Licensee has paid the License Fee (as defined in Section 5.1), Licensee may execute the Activation Notice attached hereto as Exhibit D (the "Activation Notice") in accordance with the procedures set out therein. Prior to Activation, Licensee is not licensed to distribute any products or components hereunder, and the provisions of Sections 3.1, 3.2, and 3.3 and 3.5, 3.6 and 3.7 shall only be applicable after Activation.

4.2 Delivery of Licensed Know-How. CableLabs agrees to deliver to Licensee one copy of the Licensed Know-How within ten days of the receipt by CableLabs of the Activation Notice. Upon the request of such Licensee, CableLabs shall supply such Licensor with one or more additional copies of the Licensed Know-How as may be required for Licensee's operations. CableLabs reserves the right to charge a reasonable administrative fee in connection with such additional copies. Except as provided in Section 3.1(h), Licensee shall not make further copies of any Licensed Know-How provided pursuant to this Section 4, and shall treat all such information strictly in accordance with the provisions of Sections 7.1 through 7.3.

4.3 Production Forecasts. Licensee, together with other persons who are licensees under a DFAST Technology License Agreement for Unidirectional Digital Cable Products, shall provide to the Consumer Electronics Association ("CEA") confidential production forecasts of the number of Unidirectional Digital Cable Products that are expected to be entering the marketplace. Such monthly forecasts shall be provided to CEA for a rolling five-month period for five years from the month that the first Unidirectional Digital Cable Product is self-certified. This information shall be provided to CEA with the understanding that CEA shall aggregate such information, and provide the aggregate information to CableLabs on a monthly basis. CableLabs will issue only aggregate unit volume reports to Cable Operators for use in their planning. Except as specifically provided herein, CableLabs and Cable Operators shall not use or disclose information provided under this Section 4.3 in any manner whatsoever.

5. FEES; APPLICABLE TAXES

5.1 License Fee. As consideration for the licenses granted hereunder, Licensee agrees to pay CableLabs a one-time, non-refundable license fee of \$5,000 (the "License Fee") within thirty days of the Effective Date.

5.2 Applicable Taxes. CableLabs is exempt from income tax in the United States under Section 501(c)(6) of the Internal Revenue Code. The License Fee owed by Licensee to CableLabs is exclusive of, and Licensor shall pay, all sales, use, value added, excise, income tax, and other taxes (other than income taxes) that may be levied upon either party by taxing authorities other than the United States in connection with this Agreement (except for taxes based on CableLabs' employees) and shall pay all income taxes that may be levied upon Licensee.

6. CHANGES TO GOVERNING DOCUMENTS. The Compliance Rules and the Robustness Rules may be amended from time to time only in accordance with the procedures set forth below.

6.1 Referenced Technology. CableLabs may, from time to time, give notices to Licensee for the purpose of providing advice, correcting any errors or omissions or *clarifying*, but not materially amending, altering or expanding the Referenced Technology.

6.2 Changes to the Compliance Rules and Robustness Rules. Except for a minor change that does not alter existing requirements or add new requirements, and except for permissive changes that are not binding on licensee (e.g., changes to authorize additional outputs, content protection or copy protection technologies pursuant to Sections 2.4 or 3.5 of the Compliance Rules), CableLabs may change the Compliance Rules and the Robustness Rules only in accordance with this Section 6.2. CableLabs shall notify all DFAST Licensees (as defined below) simultaneously of any changes to the Compliance Rules and Robustness Rules, and Licensee shall be required to comply with such changes within 12 months following the date (the "**Change Notice Date**") that Licensee is deemed, pursuant to Section 12.7 of this Agreement, to have received the notice from CableLabs setting forth the change in the Compliance Rules or the Robustness Rules (a "**Change Notice**"), or within such longer period as CableLabs may, at its election, specify in a Change Notice, except as provided in this Section 6.2. In the event Licensee, together with either (i) two unaffiliated licensees under a DFAST Technology License Agreement for Unidirectional Digital Cable Products (a "**DFAST Licensor**"), or (ii) such number of other DFAST Licensees that, together with Licensee, constitute a majority of all DFAST Licensees, notifies CableLabs within sixty (60) days following the Change Notice Date that it has a bona fide objection to the change on the grounds that it would materially limit the permitted functionality or capabilities of a Unidirectional Digital Cable Product, or would materially increase its cost or complexity, then the following procedures shall govern whether or not Licensee shall be required to comply with such change:

If the required number of DFAST Licensees specified above notify CableLabs that they object to the change proposed in the Change Notice

(a) CableLabs and the DFAST Licensees shall attempt in good faith to resolve any objections that the DFAST Licensees may have with respect to the proposed change during the sixty (60) day period following the Change Notice Date.

(b) At any time during such sixty (60) day period, Licensee may file a petition at the FCC for review of the proposed change in accordance with FCC regulations for expedited resolution of disputes regarding proposed changes to the Compliance Rules and Robustness Rules. The parties anticipate that the FCC shall determine in an expedited 90-day proceeding whether the proposed change serves the public interest, taking into account its effect on consumers, Licensees and Cable Operators; competition, innovation, developments in technology; and the need to protect Controlled Content.

(c) If the FCC disapproves the proposed change on or before the date that is one hundred eighty (180) days following the Change Notice Date, the proposed change shall not become effective

(d) If the FCC approves the proposed change on or before the date that is one hundred eighty (180) days following the Change Notice Date, Licensee shall be required to comply with such changes within twelve (12) months following such approval.

(e) If the FCC fails to approve or disapprove the proposed change within one hundred eighty (180) days following the Change Notice Date, Licensee shall be required to comply with such change within eighteen (18) months following the Change Notice Date

7. CONFIDENTIALITY

7.1 Confidentiality of Licensed Know-How As between CableLabs and Licensee, all of the Licensed Know-How is confidential and proprietary to CableLabs or the companies that have licensed to CableLabs. Licensee shall not use or disclose Licensed **Know-How** in any manner whatsoever other than in connection with the rights granted in Section 3 hereof or as otherwise permitted by this Section 7. Licensee shall implement and maintain security measures in order to keep the Licensed **Know-How** confidential which are at least as rigorous as Licensee employs for its own confidential information. Licensee shall implement and maintain security measures for reference source code implementations, shared secret keys, Diffie-Hellman system parameters, encryption and decryption keys, private keys and DFAST source and library files that contain DFAST constants (collectively, "Highly Confidential Information"), which are in accordance with commercial practices for managing keys, such measures to include, at a minimum, the following:

(a) Licensee shall transmit Highly Confidential Information only to its affiliates, subcontractors, consultants, agents, employers, customers and representatives who need to know the information, who are informed of the confidential nature of the information, and, in the case of affiliates, representatives, customers, subcontractors and consultants who have agreed in writing to abide by the terms and conditions of this Section 7. Licensee shall identify (by title) individuals with access to such Highly Confidential Information to CableLabs upon request.

(b) Licensee shall maintain a secure location on its premises to be identified to CableLabs in which such Highly Confidential Information shall be stored. Such secure location shall be accessible only by authorized employees who shall be required to sign in and out each time such employees visit such secure location. When such Highly Confidential Information is not in use, such information shall be stored in a locked state at such secure location. Licensee may store such Highly Confidential Information at more than one secure location with the prior approval of CableLabs, which approval shall not be unreasonably withheld.

(c) Licensee shall maintain a security log of periodic tests of security, shipments of such Highly Confidential Information from one secure location to another (if

applicable), and breaches of security at all secure locations. Licensee shall reasonably cooperate with CableLabs and its employees and agents to maintain the security of such Highly Confidential Information, including by promptly reporting to CableLabs any thefts of such Highly Confidential Information missing from Licensee's possession

(d) CableLabs shall have the right to review, upon five (5) business days notice, or such earlier time as may be reasonable and required due to special circumstances, the implementation of all security measures at the secure location(s) required hereunder for Highly Confidential Information on an ongoing basis, at reasonable times as agreed between Licensee and CableLabs, subject to a mutually agreed upon reasonable non-disclosure agreement prior to CableLabs' release of Highly Confidential Information to Licensee. Should Licensee prefer that such review be conducted by a third-party auditor, Licensee and CableLabs may agree upon one or more acceptable third-party auditors and a reasonable non-disclosure agreement, prior to CableLabs' release of Highly Confidential Information to Licensee.

7.2 Notification of Unauthorized Use or Disclosure. Licensee shall notify CableLabs immediately upon discovery of any unauthorized use or disclosure of Licensed Know-How, and will cooperate with CableLabs to seek to regain possession of the disclosed Licensed Know-How and to prevent its further unauthorized use or disclosure.

7.3 Liability for Breach of Confidentiality. With respect to information provided by CableLabs to Licensee, Licensee shall be responsible for any breach of Sections 7.1 through 7.2 by its affiliates, subcontractors, consultants, agents, employees, customers (other than CableLabs members), representatives, former affiliates, former agents, former employees, former customers (other than CableLabs members) and former representatives, provided that no obligation of confidentiality is imposed on information which (a) is already in or subsequently enters the public domain through no breach of Licensee's obligations hereunder and which CableLabs failed to remove from public availability or to enjoin such public disclosure within ninety (90) days after the date such information is or becomes generally known as set forth above; (b) is known to Licensee or is in its possession without conduct which would constitute a breach of Licensee's obligations hereunder prior to receipt from CableLabs; (c) is developed independently by Licensee by persons who have not had, either directly or indirectly, access to or knowledge of Licensed Know-How; or (d) is lawfully received by Licensee from another party without a duty of confidentiality to CableLabs. Notwithstanding anything in Sections 7.1 or 7.2 to the contrary, Licensed Know-How may be disclosed by Licensee pursuant to the order or requirements of a court or governmental administrative agency or other governmental body of competent jurisdiction, provided that (x) CableLabs has been notified of such a disclosure request sufficiently in advance to afford CableLabs reasonable opportunity to obtain a protective order or otherwise prevent or limit the scope of such disclosure to the extent permitted by law and (y) Licensee cooperates in good faith with CableLabs' efforts hereunder. The obligations under Sections 7.1 through 7.3 shall terminate three years after the last commercial use of the DFAST Technology by Licensee or any CableLabs licensee of the DFAST Technology, provided that Sections 7.1(b) through 7.1(d) shall cease to apply when Licensee has returned all tangible embodiments of Licensed Know-How in its possession to CableLabs.

8. TERM AND TERMINATION

8.1 Term. The initial term of this Agreement shall be the life of the Licensed Patents and then, upon the expiration of the Licensed Patents, the term of this Agreement shall be extended as to the Licensed Know-How automatically thereafter indefinitely on a year by year basis unless earlier terminated according to its terms; provided that under no circumstances shall the term of the license for the Licensed Patents granted pursuant to Section 3 of this Agreement exceed the patent term of the last of the Licensed Patents to expire.

8.2 Termination of Licenses for Cause. CableLabs may terminate the licenses granted hereunder for any specific model of Unidirectional Digital Cable Product that, at the time of manufacture, is in material breach of the Robustness Rules, the Compliance Rules or Section 2.2. However, CableLabs may only terminate the license, pursuant to this Section 8.2 after the potential for a cure at low cost at the headend for the relevant service has been evaluated as a reasonable alternative and CableLabs has (a) thoroughly evaluated the potential breach with respect to the relevant model of Unidirectional Digital Cable Product, (b) consulted with Licensee regarding the problem, (c) given written notice to Licensee of CableLabs' intent to terminate the license with respect to such model of Unidirectional Digital Cable Product, and (d) provided Licensee with a reasonable opportunity to cure the breach (where such breach is capable of being cured) and such breach remains uncured for sixty days following the date of such notice, or, if such breach cannot by its nature be cured within such period, if Licensee has not commenced, and thereafter at all times diligently pursues, commercially reasonable efforts to cure as soon as possible thereafter. In circumstances where Licensee's failure subjects Controlled Content to an unreasonable risk of unauthorized copying, the maximum period for the activities in clauses (a), (b), (c) and (d) of the preceding sentence shall be forty-five days and the cure period under clause (d) of the preceding sentence shall be thirty days. Termination of the licenses granted for any specific model of Unidirectional Digital Cable Product shall not affect the licenses granted for any other model.

8.3 Termination of Agreement for Cause. CableLabs may terminate this Agreement in the event that CableLabs provides notice of Licensee's material breach of any representation, warranty or covenant set forth in Section 3.3, 5.1, 7.1 through 7.3 or 9.2 hereof and (where such breach is capable of being cured) such breach remains uncured sixty (60) days following the date of such notice.

8.4 Termination by Licensee. Licensee may terminate this Agreement at any time, whether before or after Activation by Licensee, upon sixty (60) days written notice to CableLabs.

8.5 Effect of Termination. Upon the termination of the licenses granted hereunder for any specific model of Unidirectional Digital Cable Product pursuant to Section 8.2, Licensee may no longer make, have made, use, sell, import or distribute such model of Unidirectional Digital Cable Product, nor use the DFAST Technology therewith except that, if the termination did not result from Licensee's failure to satisfy the requirements of the Robustness Rules, or the Compliance Rules, Licensee may sell or distribute any remaining Unidirectional Digital Cable Products in existence at the time of termination. Unless Licensee retains a license with respect to

other models of Unidirectional Digital Cable Products hereunder, Licensee shall immediately return all copies of the DFAST Technology to CableLabs, or destroy all such copies to the reasonable satisfaction of CableLabs. Licenses properly granted to Licensee in conjunction with the sale or distribution of Unidirectional Digital Cable Products by Licensee pursuant to Section 3 prior to the date of termination shall remain in full force and effect. Upon any termination of this Agreement, Licensee shall return all tangible embodiments of Licensed Know-How in its possession to CableLabs. Unless otherwise stated herein, no termination of this Agreement, whether by CableLabs or by Licensee, or termination of any license granted hereunder shall relieve either party of any obligation or liability accrued hereunder prior to such termination, or rescind or give rise to any right to rescind anything done by either party prior to the time such termination becomes effective nor shall the survival provisions of Section 12.12 be affected by such termination

9. REPRESENTATIONS AND WARRANTIES

9.1 Representations and Warranties of CableLabs. CableLabs represents, warrants, covenants and agrees as follows.

(a) CableLabs owns all right and title to the DFAST Technology, or otherwise has the right to grant the license thereof, and to the best of CableLabs' knowledge, free of any claim or other encumbrance of any third party. None of the DFAST Technology is or ever has been declared invalid or unenforceable, or is the subject of a pending or threatened action for opposition, cancellation, declaration of invalidity, unenforceability or misappropriation or like claim, action or proceeding.

(b) Without investigation, CableLabs is not aware of any notice or claim, threatened or pending, that the use of the DFAST Technology in accordance with the terms of this Agreement infringes any third party's Intellectual Property Rights. Otherwise, the DFAST Technology is licensed on an "as is" basis

(c) CableLabs has authorized the person who has signed this Agreement for CableLabs to execute and deliver this Agreement to Licensee on behalf of CableLabs.

(d) This Agreement constitutes a valid and binding obligation of CableLabs, enforceable according to its terms.

9.2 Representations and Warranties of Licensor. Licensee represents, warrants, covenants and agrees as follows:

(a) Licensee has authorized the person who has signed this Agreement for Licensee to execute and deliver this Agreement to Licensee on behalf of Licensee.

(b) This Agreement constitutes a valid and binding obligation of Licensee enforceable according to its terms.

10. DISCLAIMERS; LIMITATION OF LIABILITY.

10.1 Disclaimers. Each party disclaims all other warranties, express or implied, including, but not limited to, (a) any warranty that the DFAST Technology does not infringe the intellectual property rights of any other person or entity, (b) any warranty that any claims of the Licensed Patent are valid or enforceable, (c) any Implied warranties of merchantability and fitness for a particular purpose, or (d) that the rights and licenses granted to Licensee hereunder comprise all the rights and licenses necessary or desirable to practice, develop, make or sell Unidirectional Digital Cable Products. The DFAST Technology and enhancements thereof, and any other items, deliverables, or information supplied by or on behalf of CableLabs are provided on an "as is" basis.

10.2. Limitation of Liability. Except as otherwise specifically limited by this Agreement, the parties shall have all rights available at law or in equity for any breach of this Agreement. In no event shall either party be liable to the other or to any Third-party Beneficiary (as defined in Section 11) for consequential, incidental, special, indirect, punitive or exemplary damages of any kind, including without limitation loss of profit, savings or revenue, or the claims of third parties, whether or not advised of the possibility of such loss, however caused and on any theory of liability, arising out of this Agreement or based on the making, using, selling or importing any product that implements the DFAST Technology. In no event shall either party be liable to the other or to any Third-Party Beneficiary under any circumstances under this Agreement for any claims that, individually or in the aggregate with all other claims exceed the amount paid by Licensee to CableLabs pursuant to Section 5 herein. Notwithstanding the foregoing, the limitation of liability amount set forth above shall be replaced with a limitation of \$1,000,000 if the liability giving rise to the claim for damages arises out of Licensee's willful and had faith material breach of the Compliance Rules, the Robustness Rules, Section 2.2 or any provision of Section 7.1 through 7.3 regarding the security or integrity of the Licensed Know-How

For purposes of this Agreement, a breach shall be "material" only if Licensee acted in a manner that is prohibited by this Agreement or failed to perform an obligation required under this Agreement, which act or failure has resulted in or would be likely to result in commercially significant harm to CableLabs or a Cable Operator, or constitutes a threat to the integrity or security of the DFAST Technology, or exposes Controlled Content to unauthorized copying. In addition, the following is a non-exclusive list of circumstances in which there is no material breach of the provisions of Sections 7.1 through 7.3: (1) if no Licensed Know-How was released to a third party not permitted hereunder to have such information or could reasonably have been expected to have been released to such third party as a result of the breach; (2) if Licensee maintains an internal program to assure compliance herewith (including a program to assure maintenance of inventory, samples, and confidentiality of information for purposes in addition to compliance with this Agreement), the breach was inadvertent or otherwise unintentional, and the breach did not have a material adverse effect on the integrity or security of the DFAST Technology; or (3) if Licensee brought the breach to CableLabs' attention in a timely manner as required by this Agreement and such breach did not have a material adverse effect on the integrity or security of DFAST Technology

11 THIRD-PARTY-BENEFICIARY RIGHTS

11.1 Compliance of Licensee and other licensees with the terms hereof is essential to maintain the value, integrity, security and performance of the DFAST Technology and networks of Cable Operators. As part of the consideration granted herein, Licensee agrees that video programming providers that provide copyrighted works for transmission to Unidirectional Digital Cable Products and the copyright owners of such work (collectively, "Content **Providers**") and Cable Operators (collectively, "Third-party Beneficiaries"), shall each be a third-party beneficiary of this Agreement, but only with respect to their **right** to bring a claim or action against Licensee to seek injunctive relief against the manufacture, distribution, commercial use and sale of Licensee's products that are in material breach of the Compliance Rules, the Robustness Rules or Section 2.2 of this Agreement, and for damages as provided in Section 11.2. In any such claim or action, reasonable attorneys' fees shall be awarded to the prevailing party.

11.2 Such Third Party Beneficiaries may seek such actual damages (up to the aggregate limits contained in Section 10.2) only after (a) such Third Party Beneficiary has given to CableLabs written notice of the potential breach, (b) the potential for a cure at low cost at the headend for the relevant service has been evaluated as a reasonable alternative; (c) CableLabs has thoroughly evaluated the potential breach with respect to the relevant Unidirectional Digital Cable Product; (d) CableLabs has consulted with Licensee regarding the problem, (e) CableLabs has provided Licensee with a reasonable opportunity to cure the breach (where such breach is capable of being cured) and such breach remains uncured for sixty (60) days following the date of such notice, or, if such breach cannot by its nature be cured within such period, if Licensee has not commenced, and thereafter at all times diligently pursued, commercially reasonable efforts to cure as soon as possible thereafter; and (f) CableLabs has used reasonable efforts to inform all Cable Operators of such breach. Third Party Beneficiaries may seek injunctive relief only after providing CableLabs and the Licensee with notice and consultation reasonable under the circumstances with respect to such third party claim. Claims and actions under this Section 11.2 shall be made only for material breaches (as defined in Section 10.2)

12. MISCELLANEOUS

12.1 Independent Contractors. The relationship established between the parties by this Agreement is that of independent contractors. Nothing in this Agreement shall be construed to constitute the parties as partners, joint venturers, co-owners, franchisers or otherwise as participants in a joint or common undertaking for any purpose whatsoever.

12.2 No Trademark Rights Granted. Nothing contained in this Agreement shall be construed as conferring any right to use in advertising, publicity, or other promotional activities any name, trade name, trademark or other designation of either party hereto (including any contraction, abbreviation or simulation of any of the foregoing).

12.3 No Patent Solicitation Required. Except as expressly provided herein, neither party shall be required hereunder to file any patent application, secure any patent or parent rights,

provide copies of patent applications to the other party or disclose any inventions described or claimed in such patent applications

12.4 Law and Jurisdiction. THIS AGREEMENT SHALL BE CONSTRUED, AND THE LEGAL RELATIONS BETWEEN THE PARTIES HERETO SHALL BE DETERMINED IN ACCORDANCE WITH THE LAW OF THE STATE OF NEW YORK, UNITED STATES OF AMERICA, WITHOUT REGARD TO ITS CONFLICT OF LAWS RULES

(a) IN CONNECTION WITH ANY LITIGATION BETWEEN THE PARTIES HERETO OR IN CONNECTION WITH ANY THIRD-PARTY-BENEFICIARY CLAIM BROUGHT HEREUNDER ARISING OUT OF OR RELATING TO THIS AGREEMENT, EACH PARTY IRREVOCABLY CONSENTS TO: (i) THE EXCLUSIVE JURISDICTION AND VENUE IN THE FEDERAL AND STATE COURTS LOCATED IN THE COUNTY OF NEW YORK, NEW YORK, AND (ii) THE SERVICE OF PROCESS OF SAID COURTS IN ANY MATTER RELATING TO THIS AGREEMENT BY PERSONAL DELIVERY OR BY MAILING OF PROCESS BY REGISTERED OR CERTIFIED MAIL, POSTAGE PREPAID, AT THE ADDRESSES SPECIFIED IN THIS AGREEMENT, OR TO THE AGENT TO BE APPOINTED PURSUANT TO THE SECTION, BELOW.

(b) IF LICENSEE DOES NOT HAVE A PRINCIPAL PLACE OF BUSINESS IN THE UNITED STATES, LICENSEE SHALL APPOINT AGENTS IN THE STATE OF NEW YORK FOR ACCEPTANCE OF SERVICE OF PROCESS PROVIDED FOR UNDER THIS AGREEMENT AND SHALL NOTIFY CABLELABS OF THE IDENTITY AND ADDRESS OF SUCH AGENT WITHIN THIRTY (30) DAYS AFTER THE EFFECTIVE DATE.

(c) LICENSEE WAIVES ANY OBJECTION TO THE JURISDICTION, PROCESS, AND VENUE OF ANY SUCH COURT, AND TO THE EFFECTIVENESS, EXECUTION, AND ENFORCEMENT OF ANY ORDER OR JUDGMENT (INCLUDING, BUT NOT LIMITED TO, A DEFAULT JUDGMENT) OF SUCH COURT PERTAINING TO THIS AGREEMENT, TO THE MAXIMUM EXTENT PERMITTED BY THE LAW OF THE PLACE WHERE ENFORCEMENT OR EXECUTION OF ANY SUCH ORDER OR JUDGMENT MAY BE SOUGHT AND BY THE LAW OF ANY PLACE WHOSE LAW MIGHT BE CLAIMED TO BE APPLICABLE REGARDING THE EFFECTIVENESS, ENFORCEMENT, OR EXECUTION OF SUCH ORDER OR JUDGMENT, INCLUDING PLACES OUTSIDE OF THE STATE OF NEW YORK AND OF THE UNITED STATES.

12.5 Compliance with Laws. In connection with this Agreement, each party shall comply with all applicable regulations and laws, including export, re-export and foreign policy controls and restrictions that may be imposed by any government. Each party shall require its customers to assume an equivalent obligation with regard to import and export controls

12.6 No Assignment. Licensee shall not assign any of its rights or privileges under this Agreement without the prior written consent of CableLabs, such consent not to be unreasonably withheld or delayed. No consent shall be required for the assignment of this Agreement to any wholly-owned subsidiary of Licensee or for the assignment in connection with

the merger or the sale of Licensee or Licensee's business unit provided that Licensee shall remain liable for its obligations hereunder. Any attempted assignment or grant in derogation of the foregoing shall be void.

12.7 Notice. Any notices required or permitted to be made or given to either party pursuant to this Agreement shall be in writing and shall be delivered as follows with notice deemed given as indicated: (a) by personal delivery when delivered personally; (b) by overnight courier upon written notification of receipt; (c) by telecopy or facsimile transmission upon acknowledgment of receipt of electronic transmission; or (d) by certified or registered mail, return receipt requested, five days after deposit in the mail. All notices must be sent to the address set forth below, or to such other address as the receiving party may have designated by written notice given to the other party:

- (a) for CableLabs,
Attention: General Counsel
400 Centennial Parkway,
Louisville, CO 80027-1266
fax: 303/661-9199; and
- (b) for Licensee,

Attention: _____
fax: _____

12.8 Amendments. No amendment or modification hereof shall be valid or binding upon the parties unless made in writing and signed by both parties.

12.9 Waiver. Any waiver by either party of any breach of this Agreement shall not constitute a waiver of any subsequent or other breach

12.10 Severability. If any provision or provisions of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not be in any way affected or impaired thereby.

12.11 Headings. The headings of the several sections of this Agreement are for convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of this Agreement.

12.12 Survival. The following sections of the Agreement shall survive any termination of the Agreement: Sections 2.2, 3.4, 5.2, 7.1, 7.2, 7.3, 10.1, 10.2, 11.1, 11.2 and 12.12.

12.13 Most Favored Status. CableLabs shall make available to Licenser any license terms made available to any or all manufacturers of Unidirectional Digital Cable Products

pursuant to the DFAST Technology License Agreement for Unidirectional Digital Cable Products. CableLabs also commits that the benefit of any modifications, clarifications or interpretations of language, made by CableLabs or mandated by applicable governmental or judicial authority, in a DFAST Technology License Agreement for Unidirectional Digital Cable Products shall be extended to Licensee in accordance with this Section 12.13. Where CableLabs agrees to make a change to a particular licensee's DFAST Technology License Agreement for Unidirectional Digital Cable Products, Licensee may incorporate such change, or upgrade to such revised agreement in total, at any time. Where CableLabs has agreed to include language in a particular DFAST Technology License Agreement for Unidirectional Digital Cable Products that is more favorable than that in Licensee's DFAST Technology License Agreement for Unidirectional Digital Cable Products, CableLabs shall not enforce the language in this Agreement with respect to Licensee to the extent that such language is less favorable than that language found in such other licensee's DFAST Technology License Agreement for Unidirectional Digital Cable Products. CableLabs shall upon the request of Licensee take reasonable steps to keep Licensee informed of any changes to the DFAST Technology License Agreement, and to provide Licensee with the most recent version. It is understood and agreed that PHILA sets forth a separate set of obligations that govern the relationship between the parties thereto, that this Agreement and the changes hereto shall not alter any provisions of any PHILA, and that changes to any PHILA shall not alter the provisions of this Agreement.

IN **WITNESS WHEREOF**, the parties hereto have caused this Agreement to be duly signed and to be effective as of the Effective Date above.

[Licensee]

Cable Television Laboratories, Inc.

Signature _____

Signature _____

Printed Name _____

Printed Name _____

Title: _____

Title _____

List of Exhibits.

Exhibit A	Referenced Technology
Exhibit B	Compliance Rules
Exhibit C	Robustness Rules
Exhibit C-1	Robustness Checklist
Exhibit D	Activation Notice